

MAY 21 2004 **TH**

Michael N. Milby, Clerk of Court

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
(HOUSTON DIVISION)

In re ENRON CORPORATION SECURITIES
LITIGATION

MDL-1446

This Document Relates To:

MARK NEWBY, *et al.*, Individually and On Behalf
of All Others Similarly Situated,

Plaintiffs,

-v.-

ENRON CORP., *et al.*,

Defendants.

Civil Action No. H-01-3624
(Consolidated, Coordinated and
Related Cases)

**SUPPLEMENTED
AFFIDAVIT OF
JACALYN D SCOTT
IN SUPPORT OF BANK
DEFENDANTS' MOTION
FOR MODIFICATION OF
THE SCHEDULING ORDER**

STATE OF TEXAS)
 : ss.:
COUNTY OF HARRIS)

Before me, the undersigned, appeared JACALYN D SCOTT, who
is personally known to me, and after being duly sworn, stated as follows:

1. I am a member of Wilshire Scott & Dyer P.C., attorneys for
Citigroup Inc. and its affiliates ("Citigroup") in this litigation. I submit this
supplemented affidavit in support of the motion by the Bank Defendants to modify the
Scheduling Order dated March 11, 2004 to adjourn by 90 days the commencement of fact
depositions, currently scheduled for June 2, 2004. I submit this supplemented affidavit to
add two sentences in paragraph 8 that were inadvertently omitted from the affidavit filed
late yesterday afternoon.

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2. As the Bank Defendants' liaison to the document depository administrator, I have been in regular contact with officials at Lex Solutio and have communicated with attorneys for Enron regarding the status of Enron's document production.

3. On August 16, 2002, the Court entered an order requiring, among other things, that Enron produce to the depository all documents it had produced to government agencies.

4. In or about February and March 2004, numerous parties to the consolidated and coordinated cases in this MDL proceeding negotiated and entered into a Document Production Agreement, dated March 5, 2004 (the "Document Production Agreement" or "Agreement"). In paragraph one of the Agreement, Enron agreed to produce "documents previously produced by Enron to the United States Congress or agencies or branches of the federal government through October 1, 2003." Enron committed in the Agreement that it would substantially complete production of these documents to the depository by March 31, 2004, and complete its production entirely by April 30, 2004. (Ex. 1.) In paragraph two of the Agreement, Enron agreed to produce to the depository all non-privileged documents it had produced to the Enron bankruptcy examiner. Enron agreed to complete production by March 31, 2004 of all such documents dated before October 1, 2001, and to complete its production to the depository of documents produced to the bankruptcy examiner by April 30, 2004. Likewise, the other parties to the Agreement were required substantially to complete their production of documents previously produced to the Enron bankruptcy examiner by March 31, 2004.

5. Enron stated on April 22, 2004 that it had produced approximately 82 million pages of such documents to the depository. *See* Affidavit of Bonnie J. White in Support of Motion to Set Protocol for Handling “Presumptively Confidential” Documents, signed April 22, 2004, ¶ 3 (the “White Affidavit”) (Ex. 2.) As of April 22, 2004, however, only approximately 23 million pages of Enron documents were available to the Bank Defendants from the depository administrator.

6. Similarly, on May 13, 2004, in response to a May 4, 2004 letter from Michael Gertzman of Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to Citigroup (Ex. 3), Kenneth Marks of Susman Godfrey LLP, counsel to Enron, stated that “Enron’s total production of documents to the depository administrator of ‘paragraph 1’ documents” – that is, documents previously produced by Enron to the United States Congress or agencies or branches of the federal government through October 1, 2003 – “is estimated to exceed 84 million pages.” Marks added that “Enron believes that the documents it has not yet been able to locate represent approximately one percent of this amount. Enron expects that a substantial number of these documents will be forwarded to the depository administrator in the next few weeks.” (Ex. 4.) As of May 13, 2004 (the date of Mr. Marks’ letter), however, only approximately 58 million pages of Enron documents were available to the Bank Defendants from the depository administrator.

7. The 58 million pages of Enron documents available to the Bank Defendants comprised the 23 million pages that were available as of the date of the White Affidavit, an installment of 14.8 million pages received on April 23, 2004, and another installment of 20.4 million pages received on April 28, 2004. At or about the time Lex Solutio provided these additional installments to the Bank Defendants, it advised the

Bank Defendants that the Enron documents that remained to be processed included approximately 8.5 million pages, approximately 800 boxes consisting of Enron's production to the bankruptcy examiner, and four hard drives from Enron that Lex Solutio indicated it had been unable to process in the format in which Enron had provided them. In addition to these documents, Enron produced to the depository, between April 1 and April 30, 2004, nine separate installments of CDs, DVDs, and boxes of documents, the total page-count of which is unknown.

8. In an effort to understand the gap between the volume of documents Enron represented that it had produced to the depository, and the volume of Enron documents Lex Solutio had told the Bank Defendants to expect, I communicated by phone and email with representatives of the depository administrator frequently in late April and early to mid-May 2004. On May 10, 2004, Lex Solutio advised me that the Enron documents it had in late April estimated comprised approximately 8.5 million pages actually comprised approximately 10.5 million pages. On Friday, May 14, 2004, and Monday, May 17, 2004, Lex Solutio advised me that the hard drives that Enron had re-produced after April 30, 2004 contained approximately 14 million pages. In addition, on Monday, May 17, 2004, Lex Solutio advised me that the boxes containing Enron's production to the bankruptcy examiner totalled approximately 1.6 million pages. Thus, this was the first time that the Bank Defendants understood that a total of 26 million pages of Enron documents remained to be provided.¹ Lex Solutio further advised me that it would take three to four weeks to process these 26 million pages before they would be

¹ This total does not include the CDs, DVDs, and boxes of documents that Enron produced to the depository in nine separate installments between April 1 and April 30, 2004; the total page-count of those installments is unknown.

able to make them available to the Bank Defendants in the format required by the depository order – meaning that we would not receive these documents before depositions are now scheduled to begin.²

9. Among the documents still being processed by the depository administrator is the entirety of Enron's production to the bankruptcy examiner, comprising what Lex Solutio estimates to be 1.6 million pages.

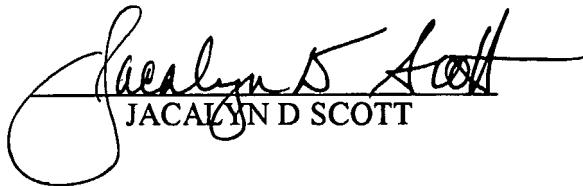
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10. In a telephone call yesterday afternoon, Lex Solutio told me that its earlier estimate of the number of pages on the hard drives that Enron had re-produced had been revised, from 14 million pages to 7.2 million pages. Thus, based on the latest information available from Lex Solutio, there remain at least 19.2 million pages of Enron documents to be processed.³ Lex Solutio has indicated that these documents will be provided to the Bank Defendants on a rolling basis over the next three weeks. Thus,

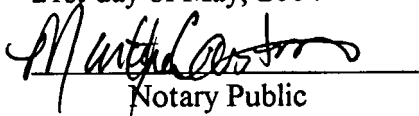
² Documents provided to Lex Solutio typically are not available to the non-producing parties right away. On the contrary, there is typically a gap between the time a party produces documents to the depository and the time the documents become available. This gap in time can range from a few days to several weeks, or even months, depending on factors such as the volume of the production, whether the documents have been provided in a format consistent with the order establishing the document depository, and whether the producing party has directed the depository administrator to perform certain tasks on the documents before they are made available. For example, with respect to Enron's production, Enron has insisted that the depository administrator conduct searches for supposedly confidential documents before making its documents available to other parties. See Enron's Motion to Set Protocol for Handling "Presumptively Confidential" Documents, filed April 22, 2004. During our discussion on Monday, May 17, 2004, Lex Solutio stated that, with respect to most of the 26 million pages of documents not yet available, approximately one week of the expected processing time would be consumed by these confidentiality searches.

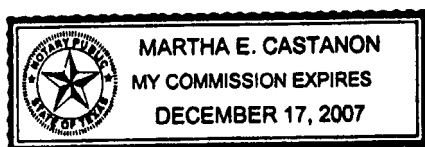
³ This total does not include the CDs, DVDs, and boxes of documents that Enron produced to the depository in nine separate installments between April 1 and April 30, 2004; the total page-count of those installments is unknown.

these documents will not be fully available until after the date depositions are now
scheduled to begin.


JACALYN D SCOTT

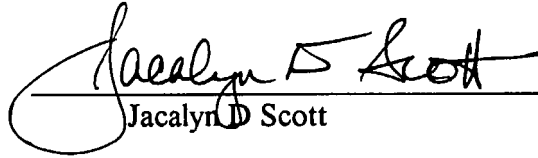
Sworn to before me this
21st day of May, 2004


Notary Public



CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Supplemented Affidavit of Jacalyn D Scott in Support of Bank Defendants' Motion for Modification of the Scheduling Order has been served by sending a copy via electronic mail to serve@ESL3624.com on this 21st day of May 2004.



Jacalyn D Scott

Exhibits to this document
are available
for viewing
in the Clerk's Office.